

**BRETT MERSEREAU**, OSB No. 023922

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Of Attorneys for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

JILL BONG,

Plaintiffs,

v.

KATE BROWN, *et al*,

Defendants.

Case No.: 6:23-cv-00417-MK

DECLARATION OF BRETT  
MERSEREAU IN SUPPORT OF DAYS  
CREEK DEFENDANTS' MOTION TO  
DISMISS

I, Brett Mersereau, declare:

1. I am counsel for defendants in this matter. I make this Declaration based upon personal knowledge. I am competent to testify as to the matters stated herein.

2. Attached hereto as exhibit 1 is the EEOC's Charge of Discrimination relating to plaintiff's claims in this matter. It is dated February 2, 2022, and indicates that plaintiff alleges claims related to her disability and religion.

3. Attached hereto as exhibit 2 is the EEOC's Determination Letter, dated June 2, 2022, in which the EEOC notified plaintiff (and defendants) that it would not proceed with an investigation. The letter gives plaintiff 90 days from that date to file a lawsuit. Ninety days from

PAGE 1 - DECLARATION OF BRETT MERSEREAU IN SUPPORT OF DAYS CREEK  
DEFENDANTS' MOTION TO DISMISS

June 2, 2022 is August 31, 2022.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that

I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED this 7th day of August, 2024.

/s/ Brett Mersereau

EEOC Form 5 (11/09)

<b>CHARGE OF DISCRIMINATION</b>  This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.	Charge Presented To:      Agency(ies) Charge No(s):  <div style="display: flex; justify-content: space-between;"> <span>EEOC</span> <span><b>551-2022-01064</b></span> </div> <div style="display: flex; justify-content: space-between;"> <span>FEPA</span> <span></span> </div>	
<b>Oregon Bureau of Labor &amp; Industries - Civil Rights Division</b> and EEOC <hr style="width: 80%; margin: 0 auto;"/> <i>State or local Agency, if any</i>		
Name <i>(indicate Mr., Ms., Mrs.)</i> Ms. Jill Bong	Home Phone (541) 825-3541	Year of Birth
Street Address Po Box 321 DAYS CREEK, OR 97429		
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. <i>(If more than two, list under PARTICULARS below.)</i>		
Name DOUGLAS COUNTY SCHOOL DISTRICT 15	No. Employees, Members Unknown Number Of Employees	Phone No.
Street Address 11381 Tiller Trail Hwy PO Box 10 DAYS CREEK, OR 97429		
Name	No. Employees, Members	Phone No.
Street Address      City, State and ZIP Code		
DISCRIMINATION BASED ON  Disability, Religion	DATE(S) DISCRIMINATION TOOK PLACE  <div style="display: flex; justify-content: space-between;"> <div>           Earliest            10/04/2021         </div> <div>           Latest            01/05/2022         </div> </div>	
THE PARTICULARS ARE <i>(If additional paper is needed, attach extra sheet(s))</i> :		

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.	NOTARY – <i>When necessary for State and Local Agency Requirements</i>
I declare under penalty of perjury that the above is true and correct.  <b>Digitally Signed By: Ms. Jill Bong</b>  <b>02/02/2022</b>  <div style="text-align: right;"><i>Charging Party Signature</i></div>	I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT   SUBSCRIBED    AND    SWORN    TO    BEFORE    ME    THIS    DATE <i>(month, day, year)</i>

EEOC Form 5 (11/09)

<p align="center"><b>CHARGE OF DISCRIMINATION</b></p> <p>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</p>	<p>Charge Presented To: Agency(ies) Charge No(s):</p> <p align="center">EEOC <b>551-2022-01064</b></p> <p align="center">FEPA</p>
<b>Oregon Bureau of Labor &amp; Industries - Civil Rights Division</b> <i>State or local Agency, if any</i>	

I was hired as a Math Tutor on or about January 04, 2016, by Douglas County School District 15, hereinafter Respondent. I was qualified for my position. On or about October 04, 2021, I was notified of a meeting on October 05, 2021. I requested via email, a medical accommodation for my disability to have meeting information provided in written form as I cannot process large amounts of verbal information. In the meeting the Respondent failed to provide my accommodation. The meeting was to discuss the requirements for complying with Oregon Health Authority OAR 333-019-1030, and requirements for submitting a religious accommodation request. During the October 05, 2021, meeting, the Respondent and Director of Human Resources, Holly Hill, agreed to allow me to submit my own paperwork as a religious accommodation. The Respondent did not provide medical accommodation for my disability as requested, and they did not identify an undue burden that they would be subjected to. On October 11, 2021, I submitted my religious paperwork (via email) that the Respondent and Holly Hill agreed to accept as reasonable accommodation. On October 14, 2021, on or around 8 am, I submitted a hard copy of my religious paperwork to the Respondent. On October 14, 2021, around 8:15am, I was introduced to the tutor who would later replace me. This tutor shares the same religious beliefs as most, if not all the employees hired by the Respondent. This tutor shares the same religious beliefs as most, if not all the district school board members, which make decisions regarding the hiring and firing of employees, for the Respondent. On October 14, 2021, on or around 11 am, the Respondent intercepted me while I was on my way to my next class, requesting that I attend an unannounced meeting with the Respondent, Holly Hill and Bob Sconce, who is the Oregon Education Association (educators union) Uniserv Consultant. I am not a member of the union, and made everyone at the meeting aware of this fact. The Respondent again did not provide medical accommodation for my disability as requested, and they did not identify an undue burden that they would be subjected to. During the October 14, 2021 meeting, the Respondent refused to acknowledge my religious paperwork that the Respondent and Holly Hill had agreed to accept as a reasonable accommodation, during the October 5, 2021 meeting. Instead, the Respondent and Holly Hill used the meeting to pressure me into signing the Oregon Health Authority "prescribed" religious exception form, which I already explained went against my sincerely held religious beliefs. Bob Sconce made comments supporting the Respondent's stance on compelling me to sign the "prescribed" religious exception form. Since I am not a member of the union, and Bob Sconce was not present to protect the rights of union members, which was the pretext of him being at the meeting. It appears that Bob Sconce was invited to increase pressure on me. I felt so harassed that I cried during this meeting. The Respondent did not identify an undue burden that they would be subjected to if they accepted my religious paperwork. The Respondent did not identify how submitting the "prescribed" form is a bona fide occupational qualification reasonably necessary to the normal operation of the Respondents business. The Respondent did not identify how I would pose a direct threat to anyone if I did not submit the "prescribed" form. On October 18, 2021, I had a final meeting with the Respondent and Holly Hill. The Respondent again did not provide medical accommodation for my disability as requested, and they did not identify an undue burden that they would be subjected to. The Respondent presented me with a Notice of Termination. The Notice stated that because I had not complied with OAR 333-019-1030, the Respondent could no longer employ me. During this meeting, I requested reasonable accommodation to teach online. The Respondent said that would not be possible, even though I had taught online for the Respondent in the past. The Respondent did not identify an undue burden that they would be subjected to, if they allowed me to tutor online. Instead, the Respondent offered me a position of night-time custodian. The custodial position is a demotion, with a pay decrease of about 40%. My disability prevents me from driving at night. Two other employees hired by the Respondent, who are also part of the teaching staff, told me that they did not submit signed "prescribed" exception form, nor did they submit the vaccination documents as "required" by OAR 333-019-1030. They belong to the same faith as most of the employees hired by the Respondent. They were not terminated from their employment, nor were they demoted. I was replaced by a tutor who shares the faith of most, if all of the other employees of the Respondent, which is a public-school district. I believe the Respondent's refusal to accept my religious paperwork to be pretext for unlawful discrimination as I received disparate treatment and was replaced by someone whose religious beliefs aligns with most, if not all of the Respondent's other employees. I believe I was discriminated against based on my religion and disability, in violation of Title VII of the Civil Rights Act of 1964, as amended and the American Disabilities Act, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.	NOTARY – When necessary for State and Local Agency Requirements
I declare under penalty of perjury that the above is true and correct.  <b>Digitally Signed By: Ms. Jill Bong</b>  <b>02/02/2022</b>  <i>Charging Party Signature</i>	I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT   SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)

CP Enclosure with EEOC Form 5 (11/09)

**PRIVACY ACT STATEMENT:** Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

1. **FORM NUMBER/TITLE/DATE.** EEOC Form 5, Charge of Discrimination (11/09).
2. **AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.
3. **PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.
4. **ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.
5. **WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION.** Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

#### NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

#### NOTICE OF NON-RETALIATION REQUIREMENTS

Please **notify** EEOC or the state or local agency where you filed your charge **if retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.



## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Seattle Field Office  
909 First Avenue, Suite 400  
Seattle, WA 98104  
(206) 576-3000  
Website: [www.eeoc.gov](http://www.eeoc.gov)

### **DETERMINATION AND NOTICE OF RIGHTS**

(This Notice replaces EEOC FORMS 161 & 161-A)

Issued On: June 2, 2022

To: Jill Bong  
Po Box 321  
DAYS CREEK, OR 97429

Charge No: 551-2022-03037

EEOC Representative and email: MARY KIM  
Investigator Support Assistant  
[mary.kim@eeoc.gov](mailto:mary.kim@eeoc.gov)

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### **DETERMINATION OF CHARGE**

The EEOC issues the following determination: The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

### **NOTICE OF YOUR RIGHT TO SUE**

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file a lawsuit based on this charge, please sign-in to the EEOC Public Portal and upload the court complaint to charge 551-2022-03037.

On Behalf of the Commission:

June 2, 2022

Date

Elizabeth Cannon  
Director

 for

**Cc:**

Holly Hill  
holly.hill@douglasesd.k12.or.us

Please retain this notice for your records.



Enclosure with EEOC Notice of Closure and Rights (01/22)

**INFORMATION RELATED TO FILING SUIT  
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court **under Federal law**. If you also plan to sue claiming violations of State law, please be aware that time limits may be shorter and other provisions of State law may be different than those described below.)*

**IMPORTANT TIME LIMITS – 90 DAYS TO FILE A LAWSUIT**

If you choose to file a lawsuit against the respondent(s) named in the charge of discrimination, you must file a complaint in court **within 90 days of the date you receive this Notice**. Receipt generally means the date when you (or your representative) opened this email or mail. You should **keep a record of the date you received this notice**. Once this 90-day period has passed, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and the record of your receiving it (email or envelope).

If your lawsuit includes a claim under the Equal Pay Act (EPA), you must file your complaint in court within 2 years (3 years for willful violations) of the date you did not receive equal pay. This time limit for filing an EPA lawsuit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, your lawsuit must be filed within 90 days of this Notice **and** within the 2- or 3-year EPA period.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Filing this Notice is not enough. For more information about filing a lawsuit, go to <https://www.eeoc.gov/employees/lawsuit.cfm>.

**ATTORNEY REPRESENTATION**

For information about locating an attorney to represent you, go to:  
<https://www.eeoc.gov/employees/lawsuit.cfm>.

In very limited circumstances, a U.S. District Court may appoint an attorney to represent individuals who demonstrate that they are financially unable to afford an attorney.

**HOW TO REQUEST YOUR CHARGE FILE AND 90-DAY TIME LIMIT FOR REQUESTS**

There are two ways to request a charge file: 1) a FOIA Request or 2) a Section 83 request. You may request your charge file under either or both procedures. EEOC can generally respond to Section 83 requests more promptly than FOIA requests.

Since a lawsuit must be filed within 90 days of this notice, please submit your request for the charge file promptly to allow sufficient time for EEOC to respond and for your review. Submit a signed written request stating it is a "FOIA Request" or a "Section 83 Request" for Charge Number 551-2022-03037 to the District Director at Nancy Sienko, 450 Golden Gate Avenue 5 West PO Box 36025

San Francisco, CA 94102.

You can also make a FOIA request online at <https://eeoc.arkcase.com/foia/portal/login>.



Enclosure with EEOC Notice of Closure and Rights (01/22)

You may request the charge file up to 90 days after receiving this Notice of Right to Sue. After the 90 days have passed, you may request the charge file only if you have filed a lawsuit in court and provide a copy of the court complaint to EEOC.

For more information on submitting FOIA Requests and Section 83 Requests, go to:

<https://www.eeoc.gov/eeoc/foia/index.cfm>.